



**Tasmanian Aboriginal Legal Service  
("TALS") Written Submission:  
Inquiry into the Tas Government  
Response to Child Sexual Abuse in  
Institutional Settings (Tasmania)**

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# Submission to the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings

## Recommendations

**Recommendation:** The Commission should recommend that the Tasmanian Government adopt all ten of TALS' recommendations in relation to the draft Child and Youth Safe Organisations Bill 2022, in particular Recommendations 1 and 10.

**Recommendation:** The Commission should recommend that the Tasmanian Government, as a matter of urgency, enshrine in legislation a transparent governance and accountability framework for all current and future youth detention facilities in Tasmania, including:

- a. establishment of an independent oversight body, and independent inspector
- b. providing a clear, culturally safe complaints mechanism, with availability of Aboriginal staff/liasion officers
- c. assigning a responsible Minister identified in legislation, with a requirement to regular report on conduct, complaints, and independent evaluations to the Tasmanian Parliament.

**Recommendation:** The Commission should recommend that Tasmania's Aboriginal communities be included as co-designers of facilities, infrastructure, programs and intended outcomes for replacement(s) for the Ashley Youth Detention Centre in order to ensure that facilities are culturally safe for Aboriginal children and young people as well as trauma- and sexual-abuse-informed and sensitive to other specific needs including disability and drug and alcohol problems.

**Recommendation:** The Commission should recommend that the Tasmanian Government adopt in full and create implementation plans for Recommendation 4 of the Out of Home Care Monitoring Report and Recommendations 2.4-2.6 of the Expert Panel in order to urgently progress steps towards ensuring that the level of Tasmanian children and young people in out-of-home care placed in relative/kinship care achieves the national level, that cultural support plans are developed for all Tasmanian Aboriginal children in out-of-home care, and that culturally safe therapeutic placement options are created in Tasmania.

**Recommendation:** The Commission should recommend that the Tasmanian Government create an independent reporting scheme for progress on the Royal Commission's recommendations.

**Recommendation:** The Commission should recommend that the Tasmanian Government, in genuine partnership with Tasmania's Aboriginal communities, create a Tasmanian Aboriginal Youth Justice Strategy, with concrete actions towards prevention, diversion and early intervention, to complement ongoing reforms of the Tasmanian youth justice system.

**Recommendation:** The Commission should recommend that the Tasmanian Government urgently expand supported housing options and drug and alcohol rehabilitation programs for Tasmanian young people, with special attention on culturally safe programs for Aboriginal children and young people.

**Recommendation:** The Commission should recommend that the Tasmanian Government as a matter of urgency raise the age of criminal responsibility to 14, and the minimum age for detention to 16.

**Recommendation:** The Commission should recommend that the Tasmanian Government maintain and expand culturally safe and appropriate family support services, including intensive support, for Aboriginal families and children through, among other things, investment in genuine partnerships with the Aboriginal community and Aboriginal Community Controlled Organisations.

**Recommendation:** To keep Tasmanian Aboriginal children and young people from contact with the youth justice and child protection systems, the Commission should recommend that the Tasmanian Government provide ongoing, adequate funding for youth and family support services, targeted and state-wide, providing therapeutic and wrap-around support for vulnerable and disadvantaged cohorts.

**Recommendation:** The Commission should recommend that the Tasmanian Government, in genuine partnership with Tasmanian Aboriginal communities, intensify initiatives to improve educational engagement, retention and attainment for Aboriginal children and young people.

**Recommendation:** The Commission should recommend that the Tasmanian Government expand the number and proportion of dwellings earmarked for Aboriginal Tasmanians in the course of its promised construction of 10,000 homes over ten years, with Tasmanian Aboriginal communities involved in genuine partnership around decisions in relation to the location and design of new stock.

**Recommendation:** The Commission should recommend that the Tasmanian Government, in genuine partnership with Tasmanian Aboriginal communities, maintain and expand culturally safe and appropriate mental health support for Aboriginal Tasmanians of all ages.

**Recommendation:** The Commission should recommend that the Tasmanian Government, in genuine partnership with Tasmanian Aboriginal communities and with victim/survivors of family violence, continue to develop and fully fund culturally safe support services for Tasmanian Aboriginal people with experience of family violence, as well as culturally safe and appropriate prevention and early intervention initiatives.

**Recommendation:** The Commission should recommend that the Tasmanian Government continue, in genuine partnership with Tasmania's Aboriginal communities, to develop actions

**designed to build Tasmanian Aboriginal children and young people's connections to country and community.**

**Recommendation: The Commission should recommend that Tasmanian Aboriginal organisations be adequately resourced to support the Tasmanian Aboriginal community in genuinely collaborative processes in order to ensure genuine partnership between the Tasmanian Government and Tasmanian Aboriginal communities.**

## Introduction – TALS

The Tasmanian Aboriginal Legal Service (TALS) is a member-based, independent, not-for-profit community legal centre that specialises in the provision of criminal, civil and family law legal information, advice and representation for Aboriginal and Torres Strait Islander peoples across Tasmania. We are an Aboriginal Community Controlled Organisation incorporated under the Office of the Registrar of Aboriginal Corporations.

In this submission, any reference to Aboriginal people is understood to also encompass Torres Strait Islander people.

TALS provides culturally safe, holistic and appropriate services that are inclusive and open to all Aboriginal Tasmanians. We understand that the most vulnerable people needing access to legal assistance are often also those who face the most difficulties asking for help, and we work hard to ensure everyone can access our services within and outside of traditional legal settings.

Aboriginal children and young people make up around 22% of TALS clients. The most common area of assistance is in respect of criminal matters. We represent young people at every stage of the criminal justice system, providing advice prior to police involvement, during arrest, at court and we support clients once they are sentenced.

We also are an advocate for law reform and for justice, equality and human rights for all First Peoples in Tasmania. Our goal is to halve Aboriginal Tasmanians' rate of negative contact with the justice system in a decade.

This submission focuses on the Tasmanian Government's response to child sexual abuse in two key institutional settings and systems of importance to our work: youth detention and the youth justice system behind it, and out-of-home care and the child safety system behind it.

## Context

Aboriginal survivors of child sexual abuse in contact with the justice system

At TALS, we deal with the impact of institutional sexual abuse of Aboriginal children every day. For many of our clients, sexual abuse as a child, usually undisclosed until recently, has driven self-medication with alcohol and illicit drugs, mental health problems, violent behaviour, contact with the youth justice and child protection systems, youth detention, and ultimately detention as an adult. For example, the witness statement of acting TALS State Manager Hannah Phillips to the Commission contains case studies of two TALS clients, both currently in Risdon Prison, both of whom experienced sexual abuse in Ashley Youth Detention Centre

(‘AYDC’). In both cases, the sexual abuse they experienced as young people has contributed to their cycle of incarceration.<sup>1</sup>

Our client’s experiences are reflective of broader trends across Australia.

- An Australian longitudinal study of child sexual abuse victims found that both male and female victim/survivors of child sexual abuse were almost five times more likely than the general population to be charged with any offence than people who had not experienced abuse.
  - The average number of charges was significantly higher for survivors of child sexual abuse than for the comparison group, and more child sexual abuse victims than controls received a custodial sentence.<sup>2</sup>
- A 2020 study of young people in the South Australian youth justice system found the prevalence rate of child sexual abuse to range from 13% among young men to nearly 40% among young women.<sup>3</sup>

Notably, across Australia, Aboriginal people in custody are more likely to have a history of sexual abuse victimisation than non-indigenous people in custody. For example, a 2003 study of Aboriginal women in custody in New South Wales found that 70% had been sexually assaulted as children.<sup>4</sup>

Aboriginal children in institutional settings

In Tasmania as in Australia as a whole, Aboriginal children and young people have been disproportionately vulnerable to sexual abuse in institutional settings in part because they are disproportionately represented in youth detention and out-of-home care -- two of the institutional settings in which sexual abuse has most often occurred.

*Youth detention*

Tasmanian Aboriginal children and young people, who make up approximately 10% of Tasmania’s children and young people, are greatly overrepresented (both numerically and as a percentage of population) in youth detention.

- In 2020-21, compared to non-indigenous children and young people in Tasmania, Tasmanian Aboriginal and Torres Strait Islander children and young people were:
  - 6.6 times as likely to be in detention.<sup>5</sup>

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<sup>1</sup> Witness Statement, Hannah Phillips, tendered 13 July 2022.

<sup>2</sup> <https://www.aic.gov.au/publications/tandi/tandi440>

<sup>3</sup>

[https://www.researchgate.net/publication/361303031 Trends issues in crime and criminal justice Adverse childhood experiences and trauma among young people in the youth justice system](https://www.researchgate.net/publication/361303031_Trends_issues_in_crime_and_criminal_justice_Adverse_childhood_experiences_and_trauma_among_young_people_in_the_youth_justice_system)

<sup>4</sup> [https://www.austlii.edu.au/cgi-bin/viewdoc/au/journals/IndigLawB/2003/24.html?context=1;query=rowena%20lawrie;mask\\_path=au/journals/AboriginalLawB+au/journals/IndigLawB](https://www.austlii.edu.au/cgi-bin/viewdoc/au/journals/IndigLawB/2003/24.html?context=1;query=rowena%20lawrie;mask_path=au/journals/AboriginalLawB+au/journals/IndigLawB)

<sup>5</sup> ROGS 2022, Community Services, Youth Justice, Table 17A.7



- Nearly 5 times more likely to be under supervision.<sup>6</sup>
- On an average day in 2020-21, Aboriginal children and young people made up:
  - 38% of children and young people in detention in Tasmania.<sup>7</sup>
    - Aboriginal boys made up 43% of Tasmanian boys in detention.<sup>8</sup>
  - 34% of children and young people under supervision in Tasmania.<sup>9</sup>
- Across 2020-21, Aboriginal children and young people made up 39% of the nights spent in detention by Tasmanian children and young people.<sup>10</sup>
- The rate per 10,000 of Tasmanian Aboriginal children and young people aged 10-17 in detention on an average night during the March quarter of 2020 was 13.4, compared to a non-Indigenous rate of 2.2 and an overall rate of 3.3.<sup>11</sup>

### *Out-of-home care*

Tasmanian Aboriginal children and young people are also greatly overrepresented in out-of-home care. Notably, placement in out-of-home care is linked not only to higher risk of sexual victimisation, but also to contact with the criminal justice system.<sup>12</sup>

- As of 30 June 2021, there were 403 Tasmanian Aboriginal children and young people in out-of-home care – 37% of the total children and young people in out-of-home care.<sup>13</sup>
- In Tasmania in 2021, Aboriginal children and young people were 3.4 times as likely as non-indigenous children and young people to be on care and protection orders, and 3.6 times as likely to be in out-of-home care.<sup>14</sup>
- The rate of Tasmanian Aboriginal children and young people in out-of-home care in 2020-21 was 34.4 per 1000, compared to 6.5 for non-indigenous children and young people.<sup>15</sup>

Tasmanian Government responses to institutional child sexual abuse: Making institutions safer for Tasmanian Aboriginal children and young people.

One approach to preventing child sexual abuse in institutional settings is to make institutions themselves safer for children and young people. In this regard, TALS note that the Tasmanian Government has accepted, or accepted in principle, the majority of the recommendations made by the Royal Commission into Institutional Responses to Child Sexual Abuse (hereafter the Royal Commission) in 2018 on making institutions safer. In this section of this submission, we focus on recommendations of particular significance for the institutions involved in youth detention and out-of-home care.

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<sup>6</sup> <https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2020-21/data>, Table S137

<sup>7</sup> ROGS 2022, Community Services, Youth Justice, Table 17A.5

<sup>8</sup> <https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2020-21/data>, Table S136.

<sup>9</sup> <https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2020-21/data>, Table S136.

<sup>10</sup> ROGS 2022, Community Services, Youth Justice, Table 17A.18

<sup>11</sup> AIHW, Youth detention population in Australia 2021, Supplementary Table S10.

<sup>12</sup> [https://www.aic.gov.au/sites/default/files/2020-09/CRG\\_221617\\_final\\_report.pdf](https://www.aic.gov.au/sites/default/files/2020-09/CRG_221617_final_report.pdf)

<sup>13</sup> ROGS 2022, Community Services, Child Protection, Table 16A.41

<sup>14</sup> ROGS 2022, Community Services, Child Protection, Table. 16A.9

<sup>15</sup> ROGS 2022, Community Services, Child Protection, Table 16A.2

Keeping Tasmanian Aboriginal children and young people safe across all institutional settings

Some of the Royal Commission's recommendations relate to measures designed to make any institutional setting safer for children and young people. In this regard, we note the Royal Commission's recommendations in relation to the creation of child and youth safe organisations (see Appendix A).

We note the circulation for comment of the Child and Youth Safe Organisations Bill 2022, which establishes Child and Youth Safe Standards, a reportable conduct scheme, and an independent regulator to oversee the scheme. We reiterate our recommendations in relation to the draft Child and Youth Safe Organisations Bill 2022 (see Appendix B). In particular, we reiterate our calls for the creation of an additional Child and Youth Safe Standard relating to the cultural safety of Aboriginal children and young people and for the appointment of a dedicated Commissioner for Aboriginal Children and Young People – a call, we note, supported by Tasmania's sitting Commissioner for Children and Young People.<sup>16</sup>

**Recommendation: The Commission should recommend that the Tasmanian Government adopt all ten of TALS' recommendations in relation to the draft Child and Youth Safe Organisations Bill 2022, in particular Recommendations 1 and 10.**

Keeping Tasmanian Aboriginal children and young people safe in youth detention

Youth detention, as recent hearings by the Commission have heard, is an environment of high risk for child sexual abuse. We note the Royal Commission's extensive recommendations in relation to creating safer youth detention facilities and systems and the Tasmanian Government's responses (see Appendix A).

Five years on from the release of the Royal Commission's recommendations, we do not believe that the Tasmanian Government has adequately addressed these recommendations. We are also concerned that there is no publicly available information to ascertain whether what has been approved in principle is happening in practice. We note that AYDC is currently in "rolling lockdowns" and children are mostly in their rooms.

Specifically:

Recommendations 15.3, 15.4: We have not seen evidence that the redesign of AYDC or the design of the planned new youth detention centres has taken safety of the environment into consideration. We have also not seen evidence that the redesign has considered the cultural needs of Aboriginal young people. We are not aware of any body worn cameras.

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<sup>16</sup> <https://www.childcomm.tas.gov.au/wp-content/uploads/2022-03-21-FINAL-Reforming-Youth-Justice-submission.pdf>

Recommendation 15.5: We have not seen evidence of a cultural safety plan for AYDC and our clients have not reported receiving any cultural support in AYDC. We are waiting for a response from AYDC in relation to how many staff they have who identify as Aboriginal.

Recommendations 15.6, 15.7: We do not feel that young people would feel comfortable and safe in disclosing sexual abuse within the current setting. This is based on information received from young people who have previously been at the AYDC. We note that exit planning is often not able to occur as often there is little notice of the date of a young person's release; for example, a release date may be set for a few weeks or months away, and then bail can be granted unexpectedly.

Recommendation 15.9: We have not seen evidence of a trauma-informed approach in practice and have not been approached as an organisation to assist in this capacity.

Recommendation 15.10: We do not feel that the existing arrangements are sufficiently independent, or that sufficient attention has been given to the issue of vulnerability to sexual abuse. Young people are arguably not going to report within the current system unless they know that they will be able to be supported by staff external to the system in which they are detained in. In this regard, we note that the Tasmanian Custodial Inspector, who is also the Ombudsman, has repeatedly reported that he is inadequately resourced to perform his multiple tasks, which include Principal Mental Health Visitor and Coordinator of the Prison Official Visitor's Scheme.<sup>17</sup>

The recent testimony to the Commission in relation to conditions at the Ashley Youth Detention Centre (AYDC) vindicates our significant concerns about the suitability of AYDC as a facility to detain vulnerable young people. Ongoing issues relating to the safety and wellbeing of young people, together with an absence of clear accountability and oversight, pose significant risks to our clients, and any Tasmanian children placed in this facility.

We are not reassured by the announcement of new facilities to replace the AYDC. In the absence of a complete overhaul of governance systems and operational procedures and a significant change in personnel, we have concerns – widely shared in the Aboriginal community – that the new facilities will simply make it more difficult to identify patterns of behaviour across the youth detention system.

In particular, we have significant concerns about the effectiveness of complaints mechanisms for Aboriginal children and young people in contact with the youth justice system. Allegations of historical and current sexual abuse, and a lack of trust in authority and institutions and cultural issues re “dobbing in” remain issues for our Aboriginal clients. A clear and transparent

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<sup>17</sup> [https://www.custodialinspector.tas.gov.au/\\_data/assets/pdf\\_file/0011/626879/FINAL-Custodial-Inspector-s-Annual-Report-2020-21.PDF](https://www.custodialinspector.tas.gov.au/_data/assets/pdf_file/0011/626879/FINAL-Custodial-Inspector-s-Annual-Report-2020-21.PDF) ;  
[https://www.custodialinspector.tas.gov.au/\\_data/assets/pdf\\_file/0004/682096/2021-22-Custodial-Inspector-Annual-Report.PDF](https://www.custodialinspector.tas.gov.au/_data/assets/pdf_file/0004/682096/2021-22-Custodial-Inspector-Annual-Report.PDF)

complaints process, coupled with a culturally sensitive, trauma-informed awareness and education campaign, would assist our clients to report sexual and other misconduct, particularly where there is a perceived and/or legitimate imbalance of power.

We also note with concern the observation by the Custodial Inspector that “The Custodial Inspector Act imposes a minimum 30-day embargo period after a report is delivered to the relevant Minister, before tabling in Parliament. This means the public release of all inspection reports is delayed for over a month after the consultation process is finalised.”<sup>18</sup>

**Recommendation: The Commission should recommend that the Tasmanian Government, as a matter of urgency, enshrine in legislation a transparent governance and accountability framework for all current and future youth detention facilities in Tasmania, including:**

- a. establishment of an independent oversight body, and independent inspector**
- b. providing a clear, culturally safe complaints mechanism, with availability of Aboriginal staff/liaison officers**
- c. assigning a responsible Minister identified in legislation, with a requirement to regularly and promptly report on conduct, complaints, and independent evaluations to the Tasmanian Parliament.**

**Recommendation: The Commission should recommend that Tasmania’s Aboriginal communities be included as co-designers of facilities, infrastructure, programs and intended outcomes for replacement(s) for the Ashley Youth Detention Centre in order to ensure that facilities are culturally safe for Aboriginal children and young people as well as trauma- and sexual-abuse-informed and sensitive to other specific needs including disability and drug and alcohol problems.**

Keeping Tasmanian Aboriginal children and young people safe in out-of-home care

Out-of-home care is another institutional setting of great risk for sexual abuse of children and young people. In this regard, we note the Royal Commission’s recommendations in relation specifically to keeping Aboriginal children and young people safe in out-of-home care (see Appendix A).

Relative/kinship care is widely recognised to be the safest place for Aboriginal and Torres Strait Islander children across Australia.<sup>19</sup> The Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP) has as its first principle the responsibility to prioritise placement of Aboriginal and Torres Strait Islander children with their Aboriginal and Torres Strait Islander family, community, or other Aboriginal and Torres Strait Islander families, where such placement is safe for the child.<sup>20</sup>

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<sup>18</sup> [https://www.custodialinspector.tas.gov.au/\\_data/assets/pdf\\_file/0008/588275/Tasmanian-Custodial-Inspector-Annual-Report-2019-20.pdf](https://www.custodialinspector.tas.gov.au/_data/assets/pdf_file/0008/588275/Tasmanian-Custodial-Inspector-Annual-Report-2019-20.pdf)

<sup>19</sup> <https://aifs.gov.au/resources/policy-and-practice-papers/kinship-care>

<sup>20</sup> <https://www.snaicc.org.au/aboriginal-and-torres-strait-islander-child-placement-principle/>

Five years on from the release of the Royal Commission’s recommendations, however, Aboriginal relative/kinship placement is still an area where Tasmania lags well behind the rest of Australia, at two levels.

- In 2021, only 47.9% of Tasmanian Aboriginal children and young people in out of home care were in the care of relatives or kin, Indigenous or non-Indigenous, or other Indigenous carers, compared to 63.1% nationally.<sup>21</sup>
- In the same year, a significantly smaller proportion – only 15.6% – of Tasmanian Aboriginal children and young people in out-of-home care were in Indigenous care – whether relatives or kin, or other Indigenous carers – compared to 41.1% nationally.<sup>22</sup>

The Aboriginal and Torres Strait Islander Child Placement Principle also has as a key principle the responsibility to ensure that Aboriginal and Torres Strait Islander children in out-of-home care are supported to maintain connection to their family, community and culture, especially children placed with non-Indigenous carers.<sup>23</sup> These connections are crucial to ensuring that Aboriginal children and young people have access to environments where they feel safe in disclosing experiences of abuse, including sexual abuse. However, in 2021, only 62.4% of Tasmanian Aboriginal children in out-of-home care had a cultural support plan in place, compared to 73.4% nationally.<sup>24</sup> This is unfortunately in keeping with the Tasmanian child safety system’s poor record overall of developing case plans: in 2021, only 59% of Tasmanian children required to have a current documented case plan had one completed.<sup>25</sup>

Meanwhile, we note Tasmania’s lack of Tasmania-based culturally safe and appropriate therapeutic residential care facilities to accommodate Tasmanian Aboriginal children and young people in out-of-home care with high therapeutic needs.

We note the recommendations found in the Tasmanian Commissioner for Children and Young People’s 2019 out-of-home care monitoring report, which call, among other things, for ensuring that the ATSICPP is embedded in legislation, policy and practice, including an increased focus on cultural planning, and for the funding and development, in collaboration with Aboriginal communities and organisations, the establishment of a therapeutic ‘on country’ residential program for Aboriginal children and young people, delivered in Tasmania by Aboriginal people (see Appendix C).

We also note the 2021 final report of an expert panel formed to examine improved service system responses for Tasmanian children and young people with highly complex needs, which includes a suite of recommendations aimed at embedding the ATSICPP, ensuring Aboriginal representation in relation to placements of Aboriginal children and young people, and investing

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<sup>21</sup> Italics added for emphasis and clarity. <https://www.aihw.gov.au/reports/child-protection/atsicpp-indicators-2019-20/contents/indicators/placement>

<sup>22</sup> <https://www.aihw.gov.au/reports/child-protection/atsicpp-indicators/contents/indicators/connection>

<sup>23</sup> <https://www.snaicc.org.au/aboriginal-and-torres-strait-islander-child-placement-principle/>

<sup>24</sup> <https://www.aihw.gov.au/reports/child-protection/atsicpp-indicators/contents/indicators/connection>

<sup>25</sup> ROGS 2022, Child Protection Services, Table 16A.23

in genuine partnerships with the Aboriginal community to build capacity for service provision and further support self-determination (see Appendix D).<sup>26</sup>

We further note that the Commissioner for Children and Young People's 2022 submission in relation to reforming Tasmania's youth justice system calls for the reforms to "acknowledge the right of Aboriginal people to determine and lead the appropriate response for their children."<sup>27</sup>

The planned review of the *Children, Young Persons and their Families Act 1997* (Tas) will provide an opportunity to strengthen the legislative mandate for the implementation of all of these recommendations through revisions to Section 10G (Aboriginal children).<sup>28</sup>

**Recommendation: The Commission should recommend that the Tasmanian Government adopt in full and create implementation plans for Recommendation 4 of the Out of Home Care Monitoring Report and Recommendations 2.4-2.6 of the Expert Panel in order to urgently progress steps towards ensuring that the level of Tasmanian children and young people in out-of-home care placed in relative/kinship care achieves the national level, that cultural support plans are developed for all Tasmanian Aboriginal children in out-of-home care, and that culturally safe therapeutic placement options are created in Tasmania.**

Continued progress on the Royal Commission's recommendations

To ensure that recommendations are fully implemented and that actions are regularly reviewed, the Tasmanian Government should create an independent reporting scheme, reporting to Parliament on an annual basis, tasked with an annual review of actions against recommendations.

**Recommendation: The Commission should recommend that the Tasmanian Government create an independent reporting scheme for progress on the Royal Commission's recommendations.**

Tasmanian Government responses: Keeping Tasmanian Aboriginal children and young people out of institutions.

While the creation of safer institutions, for instance through adoption of the Royal Commission's recommendations, is a key step towards protecting children and young people from sexual abuse once in institutional settings, TALS believes that the most important step towards preventing such abuse is to ensure that children and young people do not end up in

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<sup>26</sup> <https://publicdocumentcentre.education.tas.gov.au/library/Shared%20Documents/Final-Report-Expert-Panel.pdf>

<sup>27</sup> <https://www.childcomm.tas.gov.au/wp-content/uploads/2022-03-21-FINAL-Reforming-Youth-Justice-submission.pdf>

<sup>28</sup> <https://www.legislation.tas.gov.au/view/html/inforce/current/act-1997-028#GS10G@EN>

institutional settings in the first place. There are two key levels at which this outcome can be achieved:

- Keeping Aboriginal children and young people who are in contact with potentially institutionalising systems such as the youth justice and child protection systems out of institutional options within those systems, namely youth detention and out-of-home care.
- Keeping Aboriginal children and young people away from contact with potentially institutionalising systems such as the youth justice and child protection systems.

Keeping Tasmanian Aboriginal children and young people out of youth detention and out-of-home care

Within the youth justice and child protection systems, youth detention and out-of-home care are institutional settings of particular concern for our clients.

#### *Keeping Tasmanian Aboriginal children and young people out of youth detention*

As noted above, Tasmanian Aboriginal children and young people are greatly over-represented in youth detention. Notably, given these figures, the Tasmanian Government is not delivering on justice-related Closing the Gap targets.

- The age-standardised imprisonment rate for Aboriginal Tasmanians, which the Tasmanian Government has committed to reducing by at least 15% from 2019 figures, has in fact gone up from 729.7 per 100,000 to 775.8 per 100,000 in 2021.<sup>29</sup>
- No figure is given on the Productivity Commission dashboard for changes in the rate of young Aboriginal people in detention on an average day, which the Tasmanian Government has committed to reducing by at least 30% from 2018-19 figures.<sup>30</sup>

As a way of reducing opportunity for children to interact with institutional settings in the justice sector, the Tasmanian Government should be working actively towards a youth justice approach that prioritises alternatives to youth detention, including prevention, diversion and early intervention strategies as well as therapeutic service systems for repeat and high-risk offenders. These should include targeted interventions for Aboriginal young people. For example, Wirkara Kulpa, Victoria's first Aboriginal Youth Justice Strategy, commits to diverting young people and addressing over-representation through:

- Initiatives to keep 10 to 13-year-old Aboriginal children out of the youth justice system such as Aboriginal Community-Controlled Organisation-led early intervention family services and family-based case management for Aboriginal children under 14 at risk of, or in contact with, the criminal justice system.
- Support for a specialised youth program within the Victorian Aboriginal Legal Service.
- Creation of Aboriginal Youth Justice Hubs to deliver community-based services.

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<sup>29</sup> <https://www.pc.gov.au/closing-the-gap-data/dashboard/socioeconomic/outcome-area10>

<sup>30</sup> <https://www.pc.gov.au/closing-the-gap-data/dashboard/socioeconomic/outcome-area11>

- Commence Aboriginal case management review panels so that care and support address the strengths, risks and needs of Aboriginal children and young people, to keep them away from youth justice.<sup>31</sup>

Meanwhile, to minimise the risk to vulnerable and disadvantaged cohorts, youth detention must not be used as a substitute for housing, rehabilitation, or any other inappropriate purpose. We know anecdotally that in lieu of other appropriate options, AYDC is sometimes used as temporary housing or a quasi-detox facility; this is entirely inappropriate and unsafe on many levels. Custodial centres should always be the last resort and only for young people whose offending is serious enough, and where every possible option for community management and support has been exhausted.

Finally, the Tasmanian Government has recently committed to developing a proposal to raise the age of criminal responsibility from 10 to 12 and to raising the minimum age of detention from 10 to 14.<sup>32</sup> But this does not go far enough, as younger children and young people – who, as noted above, are disproportionately from Aboriginal backgrounds in the Tasmanian context – are always more vulnerable in institutional settings. All 15 of Australia’s children’s commissioners, guardians and advocates have called for the minimum age of criminal responsibility in all Australian states and territories to be set at 14 years, in line with the recommendations of the UN Committee on the Rights of the Child, which has also recommended 16 as the minimum age for detention.<sup>33</sup>

**Recommendation: The Commission should recommend that the Tasmanian Government, in genuine partnership with Tasmania’s Aboriginal communities, create a Tasmanian Aboriginal Youth Justice Strategy, with concrete actions towards prevention, diversion and early intervention, to complement ongoing reforms of the Tasmanian youth justice system.**

**Recommendation: The Commission should recommend that the Tasmanian Government urgently expand supported housing options and drug and alcohol rehabilitation programs for Tasmanian young people, with special attention on culturally safe programs for Aboriginal children and young people.**

**Recommendation: The Commission should recommend that the Tasmanian Government as a matter of urgency raise the age of criminal responsibility to 14, and the minimum age for detention to 16.**

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<sup>31</sup> <https://files.justice.vic.gov.au/2022-03/Youth-diversion-statement.pdf>

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[https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp2122/Quick\\_Guides/MinimumAgeCriminalResponsibility](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp2122/Quick_Guides/MinimumAgeCriminalResponsibility) ;  
[https://www.premier.tas.gov.au/site\\_resources\\_2015/additional\\_releases/raising\\_the\\_minimum\\_age\\_of\\_detention](https://www.premier.tas.gov.au/site_resources_2015/additional_releases/raising_the_minimum_age_of_detention)

<sup>33</sup> <https://www.childcomm.tas.gov.au/wp-content/uploads/ANZCCG-Joint-Media-Statement-Pledge-on-raising-the-age-not-enough-211115-FINAL.pdf> ; <https://www.hrlc.org.au/news/2019/9/23/children-under-16-should-not-be-sent-to-prison-says-new-landmark-un-guideline>.



### *Keeping Tasmanian Aboriginal children and young people out of out-of-home care*

As noted above, Tasmanian Aboriginal children and young people are greatly overrepresented in out-of-home care. Meanwhile, Aboriginal children and young people made up 36% of Tasmanian children and young people on care and protection orders in 2020-21.<sup>34</sup> Notably, given these figures, the Tasmanian Government is not delivering on its Closing the Gap commitments in this regard.

- The rate per 1000 of Aboriginal children and young people in out-of-home care, which the Tasmanian Government has committed to reducing by 45% from 2019 figures, has risen from 32.7 in 2019 to 34.4 in 2021.<sup>35</sup>

To protect the rights of Aboriginal children to be brought up in their families, it is necessary to ensure that families have equitable access to quality service supports, including an integrated and holistic child protection service system that provides vulnerable families with the opportunity to readily engage with the full range of culturally safe service supports they require.<sup>36</sup> In this regard, we note that the recommendations of the Expert Panel, in particular Recommendation 2.6 (Invest in genuine partnerships with the Aboriginal community...) can apply equally to the provision of family support systems.<sup>37</sup>

**Recommendation: The Commission should recommend that the Tasmanian Government maintain and expand culturally safe and appropriate family support services, including intensive support, for Aboriginal families and children through, among other things, investment in genuine partnerships with the Aboriginal community and Aboriginal Community Controlled Organisations.**

Keeping Tasmanian Aboriginal children and young people out of the youth justice and child protection systems

Contact with potentially institutionalising systems such as the youth justice and child protection systems by definition puts a child or young person at risk of institutionalisation, with its attendant risks. In addition to making institutions safer and making systems less likely to institutionalise children under their purviews, an equal priority for the Tasmanian Government therefore should be create the supports that will keep Aboriginal children and young people from contact with potentially institutionalising systems in the first place, in particular the youth justice and child protection systems.

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<sup>34</sup> ROGS 2022, Child Protection, Table 16A.1

<sup>35</sup> <https://www.pc.gov.au/closing-the-gap-data/dashboard/socioeconomic/outcome-area12>

<sup>36</sup> <https://www.aihw.gov.au/reports/child-protection/atsicpp-indicators/contents/indicators/prevention>

<sup>37</sup> <https://publicdocumentcentre.education.tas.gov.au/library/Shared%20Documents/Expert-Panel-Implementation-Plan-and-Progress-Report.pdf>

To do this, the Australian Institute of Health and Welfare notes, it is necessary to ensure that Aboriginal families have equitable access to quality service supports, including:

- a full range of culturally safe universal early childhood, education, health and other social services;
- targeted and intensive supports to address issues in family functioning, promote healing, and address specific parental issues including trauma, substance misuse, mental health issues, family violence and poverty;
- culturally safe family violence prevention, legal and support services;
- alternative intake and referral pathways to early intervention prior to families engaging with child protection systems.<sup>38</sup>

In this regard, we refer the Commission to the range of recommendations found in section 4 (Improving prevention and early intervention) of the Tasmanian Commissioner for Children and Young People's submission to the reform of Tasmania's youth justice system.<sup>39</sup>

**Recommendation: To keep Tasmanian Aboriginal children and young people from contact with the youth justice and child protection systems, the Commission should recommend that the Tasmanian Government provide ongoing, adequate funding for youth and family support services, targeted and state-wide, providing therapeutic and wrap-around support for vulnerable and disadvantaged cohorts.**

We further note three key systemic areas with well-documented links to contact with youth justice and child protection systems: education, housing, and mental health.

### *Education*

Disengagement from school and early school leaving with low skills are key risk factors for contact with the justice and child protection systems for Aboriginal children and young people.<sup>40</sup> Low skills, which can reflect undetected or unsupported learning difficulties, indeed can be a key driver of educational disengagement.<sup>41</sup>

- In 2021, the attendance rate in government schools for Tasmanian Aboriginal children and young people in years 1-10 was 49.1%, compared to 64.3% for non-indigenous students.<sup>42</sup>
  - In years 7-10, the attendance figure for Aboriginal young people was 38.8%, compared to 54.3% for non-indigenous students.<sup>43</sup>

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<sup>38</sup> <https://www.aihw.gov.au/reports/child-protection/atsicpp-indicators/contents/indicators/prevention>

<sup>39</sup> <https://www.childcomm.tas.gov.au/wp-content/uploads/2022-03-21-FINAL-Reforming-Youth-Justice-submission.pdf>

<sup>40</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4516271/> ; <https://www.cyp.wa.gov.au/media/1422/report-education-children-at-risk-of-disengaging-from-school-literature-review.pdf>

<sup>41</sup> <https://www.education.vic.gov.au/school/teachers/behaviour/engagement/Pages/identify-students.aspx>

<sup>42</sup> ROGS 2022, School Education, Table 4A22.

<sup>43</sup> ROGS 2022, School Education, Table 4A22.

- In 2021, 73.6% of Aboriginal Tasmanians in year 9 scored at or above the national standard for reading, compared with 87.9% of non-indigenous students – a drop since 2008.<sup>44</sup> For writing, the figure was 61.9%, compared with 79.5% for non-indigenous students.<sup>45</sup>
- In 2018, Aboriginal students in Tasmania reported the lowest sense of belonging at school of Aboriginal students in any state or territory.<sup>46</sup>

The Productivity Commission dashboard shows no new data since 2016 on progress against the goals of increasing the proportion of Aboriginal and Torres Strait Islander people attaining year 12 or an equivalent qualification to 96%. In 2016, the Tasmanian figure was 62.7%, compared to 79% for non-indigenous people.<sup>47</sup>

- Although equivalent data is not yet available, the apparent Tasmanian Aboriginal Year 10 to 12 retention rate in 2021 was 63.6%, suggesting very limited progress.<sup>48</sup>

Nor does the dashboard show new data since 2016 on progress against the goal of increasing the proportion of Aboriginal and Torres Strait Islander youth (15-24 years) who are in employment, education or training to 67 per cent. In 2016, the Tasmanian figure was 62.4%, compared to 74% for non-indigenous youth.<sup>49</sup>

We note that as of October 2022, across Tasmania’s approximately 215 primary schools, high schools, support schools, early learning centres and infant schools, the Tasmanian Department of Education’s Aboriginal Education Services employed 36 Aboriginal Educators, comprising:

- 7 Aboriginal Early Years Education Workers
- 4 Aboriginal Education Officers
- 2 Aboriginal Education Support Officers
- 23 Aboriginal Education Workers.<sup>50</sup>

Taking only Aboriginal children aged 5-14 – which excludes the crucial high school as well as early education years -- this equates to one Aboriginal Educator for every 184 Tasmanian Aboriginal children.<sup>51</sup>

**Recommendation: The Commission should recommend that the Tasmanian Government, in genuine partnership with Tasmanian Aboriginal communities, intensify initiatives to improve educational engagement, retention and attainment for Aboriginal children and young people.**

### *Housing*

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<sup>44</sup> ROGS 2022, School Education, Table 4A.30

<sup>45</sup> ROGS 2022, School Education, Table 4A.34

<sup>46</sup> ROGS 2022, School Education, Table 4A26.

<sup>47</sup> <https://www.pc.gov.au/closing-the-gap-data/dashboard/socioeconomic/outcome-area5>

<sup>48</sup> ABS 4221.0, Schools Australia 2021, Table 90a.6

<sup>49</sup> <https://www.pc.gov.au/closing-the-gap-data/dashboard/socioeconomic/outcome-area7>

<sup>50</sup> Email, Aboriginal Education Services, 24 October.

<sup>51</sup> <https://www.abs.gov.au/census/find-census-data/quickstats/2021>. The Census age breakdowns for Aboriginal people are not available in the five-year increments currently available for the general population.

Housing insecurity is a key risk factor for children and young people's contact with justice and child welfare systems.<sup>52</sup> However, the lasting and compounding impacts of colonisation have left Aboriginal Tasmanians at significantly greater risk of housing insecurity due to non-home-ownership than non-indigenous Tasmanians, and significantly more likely to meet the eligibility requirements for public and community housing (low income, low wealth).

- In 2016 (the latest figures available), only 53.6% of Aboriginal Tasmanians owned their own homes, compared with 69% of Tasmanians overall.<sup>53</sup>
- As of 30 September 2022, Aboriginal Tasmanians made up 13.2% of the applicants on Tasmania's public and community Housing Register, despite making up only 5.4% of Tasmania's population.<sup>54</sup>

Tasmania's stock of public and community housing dedicated to Aboriginal use is neither adequate to demand nor proportional to the percentage of Aboriginal people on the Tasmanian Housing Register.

- As of 30 September 2022 there were 594 Aboriginal Tasmanians on the Tasmanian Housing Register.<sup>55</sup> By contrast, as of 30 June 2022, Tasmania had a total portfolio of 335 dwellings earmarked for Aboriginal tenants.<sup>56</sup>
- These 335 dwellings made up approximately 2.5% of the state's total public and community housing stock in 2021 – despite, as noted above, Aboriginal Tasmanians making up 13.2% of Housing Register applicants.<sup>57</sup>

Meanwhile, historically, the location and design of public housing stock often has not taken the needs or desires of Aboriginal Australians into account.<sup>58</sup>

**Recommendation: The Commission should recommend that the Tasmanian Government expand the number and proportion of dwellings earmarked for Aboriginal Tasmanians in the course of its promised construction of 10,000 homes over ten years, with Tasmanian Aboriginal communities involved in genuine partnership around decisions in relation to the location and design of new stock.**

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<sup>52</sup> <https://pubmed.ncbi.nlm.nih.gov/33640732/> ;  
[https://www.researchgate.net/publication/258244523\\_Inadequate\\_housing\\_and\\_the\\_child\\_protection\\_system\\_response](https://www.researchgate.net/publication/258244523_Inadequate_housing_and_the_child_protection_system_response)

<sup>53</sup> [https://www.rific.gov.au/regional-overview/dashboard?latitude=-41.054038585&longitude=145.90605721&region=HH\\_IREG&community=Burnie](https://www.rific.gov.au/regional-overview/dashboard?latitude=-41.054038585&longitude=145.90605721&region=HH_IREG&community=Burnie)

<sup>54</sup> Community Services, Infrastructure and Housing Performance and Advice, Data Request DR201, 1 November 2022; <https://www.abs.gov.au/articles/tasmania-aboriginal-and-torres-strait-islander-population-summary>.

<sup>55</sup> Community Services, Infrastructure and Housing Performance and Advice, Data Request DR201, 1 November 2022.

<sup>56</sup> This figure comprises 164 dwellings managed by the Tasmanian Government (State Owned and Managed Indigenous Housing/SOMIH) and a further 171 dwellings managed by community housing providers. Community Services, Infrastructure and Housing Performance and Advice, Data Request DR201, 1 November 2022.

<sup>57</sup> [https://www.communities.tas.gov.au/\\_data/assets/pdf\\_file/0020/255332/Housing-Dashboard-August-2022.PDF](https://www.communities.tas.gov.au/_data/assets/pdf_file/0020/255332/Housing-Dashboard-August-2022.PDF)

<sup>58</sup> <https://www.architectureanddesign.com.au/news/aboriginal-housing-policies#>

## *Mental health*

Poor mental health among children and young people, as well as among their parents or caregivers, is a key risk factor for Tasmanian Aboriginal children and young people's contact with the justice and child protection systems.<sup>59</sup>

- In 2018-19, 30.9% of Aboriginal Tasmanians reported high to very high psychological distress,<sup>60</sup> compared to 13.4% of Tasmanians overall in 2017-18.<sup>61</sup> Seven organisations currently provide mental health support for Aboriginal Tasmanians.<sup>62</sup>

We note that Recommendation 2.6 of the Expert Panel, on investing in genuine partnerships with the Aboriginal community, could equally apply to a commitment to build capacity towards Aboriginal Community Controlled Organisation provision of mental health support for Aboriginal Tasmanians of all ages, including children and young people.<sup>63</sup>

**Recommendation: The Commission should recommend that the Tasmanian Government, in genuine partnership with Tasmanian Aboriginal communities, maintain and expand culturally safe and appropriate mental health support for Aboriginal Tasmanians of all ages.**

## *Family violence*

Family violence is strongly tied to placement of children in out-of-home care and is a key risk factor for Tasmanian Aboriginal children and young people's contact with the justice and child protection systems.<sup>64</sup> Many of our clients who are involved in the Youth Justice System have either witnessed or been the victim of family violence. Indeed, a 2017 study found that Australia-wide, an estimated 87% of all Aboriginal women in custody have been a victim of abuse either as a child or as an adult.<sup>65</sup>

Children and young people in Tasmania are increasingly affected by family violence: in 2021-22, juveniles were affected by 54% of incidents of family violence (2174 incidents), up 4% from the previous three-year average.<sup>66</sup>

- No new data is given on the Productivity Commission dashboard for the proportion of Aboriginal women aged 15+ who experienced domestic physical or threatened physical

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<sup>59</sup> [https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667\(19\)30251-8/fulltext](https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667(19)30251-8/fulltext)

<sup>60</sup> ABS 4715.0 National Aboriginal and Torres Strait Islander Health Survey, Australia, 2018-19, Table 3.3

<sup>61</sup> ABS 4364.0, National Health Survey: first results, 2017-18, Tasmania, Table 8.1

<sup>62</sup> <https://services.primaryhealthtas.com.au/social-and-emotional-wellbeing-aboriginal-people>

<sup>63</sup> <https://publicdocumentcentre.education.tas.gov.au/library/Shared%20Documents/Final-Report-Expert-Panel.pdf>

<sup>64</sup> <https://aifs.gov.au/resources/policy-and-practice-papers/exploring-family-violence-links-between-child-maltreatment-and>

<sup>65</sup> <http://unlockthefacts.com.au/Indigenous-incarceration.pdf>

<sup>66</sup> <https://www.police.tas.gov.au/uploads/Corporate-Performance-Report-June-2022.pdf>

harm, which the Tasmanian Government has committed to reduce by at least 50% from 2018-19 figures (8.3%) by 2031, as progress towards zero.<sup>67</sup>

We note that Recommendation 2.6 of the Expert Panel, on investing in genuine partnerships with the Aboriginal community, could equally apply to a commitment to build capacity towards Aboriginal Community Controlled Organisation provision of support for Aboriginal Tasmanians with experience of family violence of all ages, including children and young people.<sup>68</sup>

**Recommendation: The Commission should recommend that the Tasmanian Government, in genuine partnership with Tasmanian Aboriginal communities and with victim/survivors of family violence, continue to develop and fully fund culturally safe support services for Tasmanian Aboriginal people with experience of family violence, as well as culturally safe and appropriate prevention and early intervention initiatives.**

Finally, we note that the overall wellbeing of Tasmanian Aboriginal children and young people is vitally linked to connection to country and community. Tasmania's Child and Youth Wellbeing Strategy acknowledges this fact, and Principle 2 of the Strategy further commits the Tasmanian Government to providing opportunities for Tasmanian Aboriginal children and young people to connect to community and country and to working in partnership with Tasmanian Aboriginal people to ensure that life outcomes for Tasmanian Aboriginal children and young people are equal to all Tasmanian children and youth. Actions under the Strategy's Positive Sense of Culture and Identity domain's focus areas include providing opportunities for young people to connect with their culture and ensuring that the cultural needs of clients are respected and valued within Government services.<sup>69</sup>

**Recommendation: The Commission should recommend that the Tasmanian Government continue, in genuine partnership with Tasmania's Aboriginal communities, to develop actions designed to build Tasmanian Aboriginal children and young people's connections to country and community.**

Interaction with the Commission and related Inquiry design issues

TALS has appreciated the opportunity to interact with the Commission in relation to this inquiry. The TALS Board and State Manager have actively engaged in the Inquiry, including through meeting with Commissioner Neave and through the provision of a witness statement from (acting) State Manager.<sup>70</sup>

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<sup>67</sup> <https://www.pc.gov.au/closing-the-gap-data/dashboard/socioeconomic/outcome-area13>

<sup>68</sup> <https://publicdocumentcentre.education.tas.gov.au/library/Shared%20Documents/Final-Report-Expert-Panel.pdf>

<sup>69</sup> [https://hdp-au-prod-app-tas-shapewellbeing-files.s3.ap-southeast-2.amazonaws.com/2116/3159/8898/Child\\_and\\_Youth\\_Wellbeing\\_Strategy\\_Sept\\_2021\\_wcag\\_FINAL.pdf](https://hdp-au-prod-app-tas-shapewellbeing-files.s3.ap-southeast-2.amazonaws.com/2116/3159/8898/Child_and_Youth_Wellbeing_Strategy_Sept_2021_wcag_FINAL.pdf)

<sup>70</sup> Tendered 13 July 2022.

Nevertheless, conversations with members of Tasmania's Aboriginal community as well as Tasmanian Aboriginal organisations as well as our own experience of the Commission have raised some limitations in the Inquiry process.

- Scope of the Commission: We believe that greater consultation with youth justice sector and Aboriginal communities in the development of the Terms of Reference could have enhanced depth and impact of this Inquiry.
- Timeframes: The timeframes provided for organisations and individuals to provide submissions to the Commission have not always been sufficient for organisations and individuals to adequately consider or prepare information.
- Witness support: Our clients report insufficient support and counselling for witnesses pre- and post-hearings.
- Targeting of consultations: We note the need for special attention to be paid to the inclusion of the voices of Tasmanian Aboriginal children and young people themselves in matters concerning them. We note the call by the Tasmanian Commissioner for Children and Young People in this regard.<sup>71</sup>

These issues should be considered in the design of future inquiries, particularly those investigating matters directly impacting Aboriginal communities in Tasmania.

Finally, to drive real change, the Tasmanian Government and relevant agencies must work collaboratively in partnership with Aboriginal communities across the state. Without genuine, robust collaboration and community-led solutions, outcomes for and safety of Aboriginal youth are unlikely to improve. To be truly effective, as well as to provide redress for historical marginalisation in decision-making, the Government's approach needs to shift to, at a minimum, a genuinely collaborative model that involves Aboriginal communities in decision-making, problem definition, and production of outcomes and outputs. In practice, this means:

- Aboriginal community representatives should be part of project teams.
- Aboriginal organisations should be on equal footing with government organisations in independently-facilitated co-design processes for policies, programs and projects.
- Aboriginal organisations should be involved in implementation, monitoring and evaluation of projects, programs or policy.
- Aboriginal organisations should sit on project, program or policy governance groups.<sup>72</sup>

Targeted funding is required to support Aboriginal and Torres Strait Islander parties to collaborate with government in formal partnerships in respect of any reforms. Communities will need funding to potentially obtain independent policy advice, meet government to determine their position and to engage with people from all relevant groups within their community.

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<sup>71</sup> <https://www.childcomm.tas.gov.au/wp-content/uploads/2022-03-21-FINAL-Reforming-Youth-Justice-submission.pdf>

<sup>72</sup> <https://tascoss.org.au/wp-content/uploads/2022/09/TasCOSS-Spectrum-of-Engagement.pdf>

**Recommendation: The Commission should recommend that Tasmanian Aboriginal organisations be adequately resourced to support the Tasmanian Aboriginal community in genuinely collaborative processes in order to ensure genuine partnership between the Tasmanian Government and Tasmanian Aboriginal communities.**

## Conclusion

Thank you for the opportunity to provide this submission, and for the Commission's consideration of its contents. We hope that in the Commission's findings and the Tasmanian Government's response, both the Commission and the Government will commit to truth telling and to cultural safety and sensitivity.

We hope that the implementation of the Commission's recommendations will involve genuine partnership with Tasmania's Aboriginal communities, as well as with people with lived experience of the youth justice and child protection systems. There is a wealth of knowledge and lived experience available to inform and lead culturally appropriate solutions. TALS is well placed to assist with this.

The Board and management of TALS looks forward to further engagement with the Commission in the drafting and finalisation of its report over the coming months.



## Appendix A: Royal Commission recommendations

### Child safe organisations

Rec #	Description	Tasmanian Government Response <sup>73</sup>
6.5	Child Safe Standards (CSS) outlined in the Royal Commission are upheld including those relating to complaints and reporting mechanisms	Accepted in principle. Child and Youth Safe Organisations Bill 2022 creates CSS, independent oversight and reportable conduct scheme.
6.10, 6.11	An independent body responsible for oversight of CSS at any detention facility	Accepted in principle. Child and Youth Safe Organisations Bill 2022 creates CSS, independent oversight and reportable conduct scheme.
7.10-7.12	The introduction of reportable conduct schemes	Accepted in principle. Child and Youth Safe Organisations Bill 2022 creates CSS, independent oversight and reportable conduct scheme.

### Youth detention

Recommendation	Description	Tasmanian Government Response <sup>74</sup>
15.3, 15.4	Creating a safer environment youth detention, including building and design features that ensure and maximise surveillance opportunities without impinging on a child's privacy (including CCTV and body worn cameras)	Accepted in principle. AYDC renovations include improvement of CCTV coverage, scanner technology to reduce physical body searches.
15.5	Relating to the specific needs and cultural safety of Aboriginal and Torres Strait Islander children in detention, including:	Accepted in principle. a) Communities Tasmania is a culturally diverse employer and seeks to attract employees from diverse backgrounds.

<sup>73</sup> [https://www.justice.tas.gov.au/\\_data/assets/pdf\\_file/0009/643932/Appendix-A-Fourth-Annual-Report-and-Ac~Plan-2022-Royal-Commission-into-Institutional-Responses-to-Child-Sexual-Abuse-FINAL-APPROVED\\_accessible.pdf](https://www.justice.tas.gov.au/_data/assets/pdf_file/0009/643932/Appendix-A-Fourth-Annual-Report-and-Ac~Plan-2022-Royal-Commission-into-Institutional-Responses-to-Child-Sexual-Abuse-FINAL-APPROVED_accessible.pdf)

<sup>74</sup> [https://www.justice.tas.gov.au/\\_data/assets/pdf\\_file/0009/643932/Appendix-A-Fourth-Annual-Report-and-Ac~Plan-2022-Royal-Commission-into-Institutional-Responses-to-Child-Sexual-Abuse-FINAL-APPROVED\\_accessible.pdf](https://www.justice.tas.gov.au/_data/assets/pdf_file/0009/643932/Appendix-A-Fourth-Annual-Report-and-Ac~Plan-2022-Royal-Commission-into-Institutional-Responses-to-Child-Sexual-Abuse-FINAL-APPROVED_accessible.pdf)

	<p>a. recruiting and developing Aboriginal and Torres Strait Islander staff to work at all levels of the youth justice system, including in key roles in complaint handling systems.</p> <p>b. providing access to interpreters, particularly with respect to induction and education programs, and accessing internal and external complaint handling systems.</p> <p>c. ensuring that all youth detention facilities have culturally appropriate policies and procedures that facilitate connection with family, community, and culture, and reflect an understanding of, and respect for, cultural practices in different clan groups.</p> <p>d. employing, training and professionally developing culturally competent staff who understand the particular needs and experiences of Aboriginal and Torres Strait Islander children, including the specific barriers that Aboriginal and Torres Strait Islander children face in disclosing sexual abuse.</p>	<p>AYDC has recruited staff from a diverse array of cultures, including Aboriginal and Torres Strait Islanders' people. Decision making with young people detained at AYDC is determined using a care team approach often involving family members and other service providers that are part of or identify with the young person's cultural connectivity.</p> <p>b) AYDC staff use the Interpreters and Translators procedure when working with people from culturally and linguistically diverse communities where English is not their first language, and for young people, and their families who are hearing impaired.</p> <p>c) AYDC recognises and respects the diversity of all young people, whether that be, disability, gender, sexual orientation, national origin, race, religion and difference of thought, ideas, and interests. AYDC is also responsive to these differences, delivering client-centred care that is specific to the needs of the young person, recognising that a strong sense of identity and belonging is a key principle of AYDC practice. This policy position provides the basis for procedures, practice, and cultural competence training for staff. For example:</p> <ul style="list-style-type: none"> <li>• The Tasmanian Aboriginal Centre (TAC) and the Circular Head Aboriginal Corporation (CHAC) provide services and programs to all young people in the Centre;</li> <li>• The TAC and CHAC also participate in care planning meetings for Aboriginal young people;</li> <li>• The AYDC school incorporates identity and culture including Aboriginal culture as part of the curriculum;</li> </ul>
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		<ul style="list-style-type: none"> <li>• The Centre redevelopment has allocated a multi faith prayer room for young people. Additionally, a priest visits the Centre every Friday and interacts with staff and young people; and</li> <li>• Staff at AYDC use the correct pronoun’s she/he for transgender young people.</li> </ul> <p>It is planned to create a cultural yarning circle that assists young people to practice speaking and listening. The aim of this is to acknowledge the connection for young people with their people and land.</p> <p>d) Cultural Awareness training is being rolled out to AYDC staff as a part of their funded training program currently provided to all CYF staff. Equal Opportunity Tasmania has provided equal opportunity training to all AYDC teams, and online training is available to AYDC staff on indicators and disclosure of sexual abuse. CYF Workforce Development Team are currently pursuing external training providers to deliver LGBTIQ+ training to all CYF including AYDC, and currently provides literature to staff about LGBTIQ, and treating all young people in a dignified and respectful manner. Consistent with the National Agreement on Closing the Gap, the Blueprint for the reform of the youth justice system will focus on building partnerships with Aboriginal communities to support their capacity to deliver services for Aboriginal youth at risk of, or having entered the youth justice system.</p>
15.6, 15.7	Relating to the specific needs of children with other specific needs including drug and alcohol problems, disabilities, and survivors of sexual abuse.	<p>Accepted in principle.</p> <p>AYDC works in collaboration with young people and various other agencies to identify what the physical and psychological needs of a young person are whilst in detention, what supports they</p>

		<p>require post release and what services are appropriate to provide that service.</p> <p>The services currently being utilised to support young people who are survivors of sexual abuse are:</p> <ul style="list-style-type: none"> <li>• Clinical Psychologist, servicing young people as part of the AYDC Health Service;</li> <li>• Sexual Assault Services, including the new state-wide program offering services to young people engaged in harmful sexualised behaviours; and</li> <li>• The Protective Behaviours program through the AYDC School.</li> </ul> <p>A Justice Liaison Officer is also onsite weekly for young people requiring NDIS assistance.</p> <p>Exit planning aims to ensure there is continuous service delivery and young people have their needs met through specialist services. Initially, this is achieved through the Multidisciplinary meetings, complex case conferences, care team meetings and exit planning.</p>
15.8	Relating to staff training in trauma-informed care to meet the needs of, among others, children at risk of sexual abuse and children with harmful sexual behaviours	<p>Accepted in principle.</p> <p>Staff have attended introductory workshops on trauma-informed practice and responding to the risk and incidence of harmful sexualised behaviours in detention.</p>
15.9	Support and training for staff, improved complaint handling systems including a trauma-informed approach for Aboriginal and Torres Strait Islander detainees where appropriate.	<p>Accepted in principle.</p> <p>The AYDC Practice Frameworks guides staff in trauma-informed care, and this may include Aboriginal Service Organisations and professionals to support young people and their families following a complaint. Staff at AYDC are mindful of how experiences can impact everyone differently and understand that we all have unique perspectives and needs.</p>

15.10	Install an independent oversight body and inspector to oversee appropriate visitation, complaint handling and reporting powers. The body would require adequate ongoing funding, and have expertise in child-trauma and the prevention and identification of child sexual abuse.	Accepted, noting the existing roles of Tasmanian Custodial Inspector and Commissioner for Children and Young People.
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**Out of home care**

<b>Rec #</b>	<b>Description</b>	<b>Tasmanian Government Response</b>
<b>12.20</b>	Relating to the development and implementation of the Aboriginal and Torres Strait Islander Child Placement Principle	The Tasmanian Government accepts in principle this recommendation and notes that this body of work is being progressed at the national level through Children and Families Secretaries (CAFS) Group through the National Permanency Work Plan.

## Appendix B: Child and Youth Safe Organisations Bill 2022: TALS Recommendations

- Recommendation 1: The Bill be amended to include an additional Child and Youth Safe Standard relating to the cultural safety of Aboriginal children and young people, developed in consultation with Tasmania's Aboriginal community and conforming to the essence of Victorian Child and Youth Safe Standard 1.
- Recommendation 2: The Tasmanian Reportable Conduct Scheme be expanded to cover all classes of entity covered by the Child and Youth Safe Standards.
- Recommendation 3: The Independent Regulator should be supported by an independent, impartial entity committed to Aboriginal cultural safety in its values, operations and staffing.
- Recommendation 4: Specific reference should be made to the need for the Regulator and staff to proceed from a trauma-informed approach.
- Recommendation 5: The Bill should include 'and promote' to Part 5 (32)(1) of the Bill in relation to the safety and well-being of children, and also include reinforcement of cultural safety for Aboriginal children and young people as a prescribed purpose under Part 5 (32)(1).
- Recommendation 6: In cases of reportable conduct involving an Aboriginal child or young person, the Bill should include mandatory prompt information-sharing by the Independent Regulator with an Aboriginal organisation nominated by the child/young person or parent.
- Recommendation 7: The Independent Regulator should, in consultation with Tasmania's Aboriginal community, prioritise the development of minimum requirements, compliance indicators, foundation steps and further steps for each Child Safe Standard, including a new Standard related to Aboriginal cultural safety.
- Recommendation 8: The Tasmanian Government should give consideration as to how the Regulator and the Reportable Conduct Scheme will operate to build the capacity of Tasmanian organisations, entities, families and carers of Tasmanian children and young people.
- Recommendation 9: The Regulator must be adequately resourced to perform their extensive compliance-related, educational and capacity-building functions.
- Recommendation 10: The Tasmanian Government appoint a dedicated Commissioner for Aboriginal Children and Young People.

Appendix C: Recommendations, Tasmanian Commissioner for Children and Young People, Monitoring Report No. 1, “The Tasmanian Out-Of-Home Care System and ‘Being Healthy’”<sup>75</sup>

[N]oting the overrepresentation of Aboriginal children and young people in the child safety system, I recommend:

4. That the Tasmanian Government:

- a. Ensures that the Aboriginal and Torres Strait Islander Child Placement Principle is embedded in legislation, policy and practice, including an increased focus on cultural planning.
- b. Ensures the participation of representatives of Aboriginal communities and organisations in service design, delivery and individual case decisions, and otherwise promotes and invests in genuine partnerships with Aboriginal communities to support self-determination.
- c. Ensures all those involved in decisions regarding Tasmanian Aboriginal children and young people in out-of-home care are appropriately trained to ensure they have an understanding and appreciation of Tasmanian Aboriginal history, heritage and culture.
- d. Ensures the Aboriginal identity of children and young people in out-of-home care is appropriately and promptly ascertained and communicated to carers and to non-government out-of-home care providers.
- e. Funds and develops, in collaboration with representatives of Aboriginal communities and organisations, the establishment of a therapeutic ‘on country’ residential program for Aboriginal children and young people which is delivered in Tasmania by Aboriginal people.

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<sup>75</sup> <https://www.childcomm.tas.gov.au/wp-content/uploads/October-2019-FINAL-CCYP-Out-of-Home-Care-Monitoring-Report-No-1.pdf>

Appendix D: Recommendations, Expert panel advice and recommendations to the Minister for Children and Youth on the essential therapeutic elements required for an improved service system response for Tasmanian children and young people with highly complex needs (July 2021).<sup>76</sup>

- Recommendation 2.4 Embed the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP) across Government ensuring:
  - 2.4.1 all new care plans for Aboriginal children and young people are developed in consultation with a person from the kinship group, Aboriginal community or organisation representing the Aboriginal people nominated by the young person and/or their family;
  - 2.4.2 no new placements, or placement transitions should be initiated for Aboriginal children or young people without the involvement of their nominated representative; and
  - 2.4.3 statutory obligation for the ATSCPP and ‘recognised body’ are implemented.
- Recommendation 2.5 Effective immediately for children and young people identifying as Aboriginal, the following should not occur without consultation and input with the relevant and identified Aboriginal organisation:
  - 2.5.1 further placements to MC1D;
  - 2.5.2 any other residential care placement; and
  - 2.5.3 any other significant decisions about a child or young person’s care.
- Recommendation 2.6 Invest in genuine partnerships with the Aboriginal community to build capacity towards Aboriginal Community Controlled Organisations provision of out-of-home care and to further support self-determination.

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<sup>76</sup> <https://publicdocumentcentre.education.tas.gov.au/library/Shared%20Documents/Final-Report-Expert-Panel.pdf>